

Federal Rule of Civil Procedure 45(d)(3) requires a subpoena be quashed when it “(i) fails to allow reasonable time to comply; (ii) requires a person to comply beyond the geographical limits specified in rule 45(c); (iii) requires disclosure of privilege or other protected matter, if no exception or waiver applies; or (iv) subjects a person to undue burden.” An

existential threat of possible disclosure of privileged material is not enough to satisfy the dictates of Rule 45. There is no indication in Plaintiffs' subpoena they are seeking testimony on privileged matters. If the situation arises, it can be decided for each specific question by the Court at the time of Ms. Carriker's testimony.

In non-criminal proceedings, a witness must specifically claim the privilege on a particular question. *Iron Workers St. Louis Dist. Council Annuity Trust v. DKW Constr. Co. Inc.*, No. 4:10-CV-00192 (JCH), 2007 WL 3620476 (E.D.Mo. Sept. 9, 2010) (citing *Capital Prod. Corp. v. Hernon*, 457 F.2d 541 (8th Cir. 1972)). The Court must determine if the witness is "confronted by substantial and real and not merely trifling or imaginary, hazards of incrimination." *Capital Prod. Corp.*, 457 F.2d at 543. Until a specific question is posed raising the possibility of incrimination, the Court cannot determine if the privilege may be claimed. The Court will determine if a question is outside the scope of allowable testimony during Ms. Carriker's testimony.

Accordingly,

IT IS HEREBY ORDERED that Jane Carriker's Motion to Quash Subpoena [ECF No. 2090] is **DENIED**.

So Ordered this 12th day of January, 2015.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE